verge of breaking out between Ecuador and Peru is not only a tribute to the power of mediation as undertaken by Brazil, the Argentine Republic and the United States, but to the amenability of our South American neighbors to the influences which in the second Hague Conference they helped to strengthen.

In our own country the whole movement has been wonderfully stimulated by the munificent gift of that great citizen, Mr. Carnegie. With the wise provisions accompanying the endowment, it cannot fail to be of the greatest service to humanity, making possible as it does an exhaustive study of the whole subject. Quite apart from financial considerations, it will spur on the present arbitration and peace societies to renewed endeavors. And it is particularly pleasing to me that for the first time there seems a reasonable certainty that these societies in the United States will soon be working in business-like co-operation. For two years a committee of this conference has been working on a plan to bring this about, and you will this morning hear the report of that committee. The National Peace Congress held at Baltimore early this month adopted a resolution looking to the same end—namely, the establishment of a national council or clearing house through which the societies may be kept informed of each other's work and advised as to the most effective methods of co-operation. The peace movement in America will then present a united national front. In fact, the Baltimore Congress marked a step in this co-operative campaign, for it was the first meeting ever held under the auspices of *all* the leading societies in the country devoted to the settlement of international disputes by means other than war.

Our movement is no longer confined to individuals or societies. It has become governmental. President Taft and Secretary Knox are among its strongest supporters, and both have made noteworthy utterances in its favor. Those who a year ago thought the President assumed an untenable position in advocating unlimited arbitration have in recent months had ample proof of his sincerity. Not only is he earnestly engaged in negotiating with Great Britain, and perhaps also with France, a treaty of unlimited scope, but we have his clear inference that he hopes the treaty will serve as a model for others, and, perhaps, for a world treaty. The adoption at this time of such a treaty with Great Britain would be the greatest event in the history of international arbitration. I earnestly hope we will all use our influence to support the President in his position. Already Sir Edward Grey, Mr. Balfour, Premier Asquith and other English leaders of every shade of political belief have expressed willingness to meet us half way. Let us do as much as they. The time is propitious, for the last year has seen definite provision for the clearing away of all boundary, pecuniary and other differences between the English-speaking peoples, and plans are well under way for a celebration of the hundredth anniversary of the Treaty of Ghent that shall register the determination that war between England and the United States shall never again occur.

That the proposed treaty should meet opposition in the Senate is hardly possible. That body is too intelligent and high-minded to stand in the way of a reasonable proposal of such importance. Moreover, Congress has recently been very active in promoting international peace. Last June it passed a resolution authorizing the President to appoint a commission to study the question of international peace and of armaments. That the President has not named the commission is due only to the fact that he is hoping to secure simultaneous action in other nations. Congress also voted a substantial sum toward the expenses of the Interparliamentary Union, and the Senate has recently ratified the Prize Court Convention adopted at the second Hague Conference and the convention of the last Pan-American Conference providing for the arbitration of differences relating to pecuniary claims arising between any nations of the Western Hemisphere. Congress is with us in any practical plans for peace.

These are by no means all the important events of the year. A conference of national importance was held in Washington last December under the auspices of the American Society for the Judicial Settlement of International Disputes. New and flourishing peace societies have sprung up in several parts of the country. The churches, more than ever before, are becoming awake to their duty. The great movement for conciliation and peace initiated by the clergy of England and Germany and voiced by such great meetings as that recently held in the Guildhall, London, is finding a response in this country. A committee of American clergymen, informally named at our Conference last year, has been very active. A notable meeting was held in New York last November and more recently one at the Calvary Baptist Church, one at Plymouth Church, Brooklyn, and one at the great new Cathedral of St. John. At this meeting you will hear distinguished representatives of this work from England, Canada, Germany and the United States. I wish the discussion might result in plans for a great undenominational campaign for peace by the churches of the world.

I cannot help saying again how intensely happy it makes me at my time of life to see this great movement which, almost from its beginning in this country, I have watched with intense interest, assuming its proper position in public affairs. I still hope, within my lifetime, to see the establishment of a real international court of justice open to all nations; but if this is not to be, I shall feel that the foundations have been laid and that such a court is sure of a comparatively early establishment. The court created, the task will be to develop a public sentiment that will compel its universal use, and for this work we shall need our full strength. Let us not be misled by the hopeful events of today. They may well be cause for rejoicing, but there is much yet to be done, and we must not slacken our pace. Let us work unceasingly.

The Carnegie Endowment and International Peace.

By President Nicholas Murray Butler, of Columbia University.

OPENING ADDRESS OF DR. BUTLER AS PRESIDING OFFICER OF THE LAKE MOHONK CONFERENCE ON INTERNATIONAL ARBITRATION, MAY 24, 1911.

The reassembling of this Conference for its seventeenth annual session takes place at a moment and under circumstances when our feelings of exhilaration and enthusiasm run high. Never before has the mind of the world been so occupied with the problems of

substituting law for war, peace with righteousness for triumph after slaughter, the victories of right and reasonableness for those of might and brute force. It begins to look as if the stone of Sisyphus that has so often been rolled with toil and tribulation almost to the top of the hill, only to break loose and roll again to the bottom, is now in a fair way to be carried quite to the summit. The long years of patient argument and exhortation and of painstaking instruction of public opinion in this and other countries are bearing fruit in full measure. In response to imperative demands of public opinion, responsible governments and cabinet ministers are just now diligently busying themselves with plans which but a short time ago were derided as impractical and visionary. Even the genial cynic, whom like the poor we have always with us, is quiescent for the moment. But a new adversary has been lured from his lurking-place. Arguments are now making, in publications not wholly given over to humorous writing, that war and the preparations for war must not be harshly and rudely interfered with by the establishment of international courts of justice, because these wars are part of the divine order of the universe. This is certainly important, if true. We used to be told that war was essential for the development of the highest moral qualities; we are now assured that it is part of a true religious faith as well. Surely, in this sublime contention lack of humor has done its worst! The establishment of peace through justice and of international good will through international friendship, must be making great strides when its adversaries are willing to appear in so ridiculous a guise.

A clever observer of his kind said not long ago that whenever some occupation was discovered making for the peace of the world that was as profitable as is the preparation for war, then the age of militarism would be over. This statement touches upon a very profound and far-reaching truth to which I ventured to allude in this place a year ago. This truth is one that must be seriously reckoned with. We have now reached a point where, unparalleled enthusiasm having been aroused for a rational and orderly development of civilization through the co-operation of the various nations of the earth, it remains to clinch that enthusiasm and to transform it into established policy by proving to all men that militarism does not pay and that peace is profitable. We must meet the money-changers at the doors of their own counting-houses. Just so long as the great mass of mankind believe that military and naval rivalry between civilized nations creates and protects trade, develops and assures commerce, and gives prestige and power to peoples otherwise weak, just so long will the mass of mankind be unwilling to compel their governments to recede from militaristic policies, whatever may be their vocal professions as to peace and arbitration and as to good will and friendship between men of different tongues and of different blood.

The fact of the matter is that these widely held beliefs as to the relation between armaments and trade are wholly fallacious, and represent the survival of a state of opinion and a state of fact which have been superseded for at least a generation. These fallacious beliefs are now the point in the wall of opposition to the establishment of peace through justice, at which sharp and concentrated attack should be directed. Overthrow these and there will not be much opposition left which is not essentially evil in its intent.

THE CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE.

Fortunately, by reason of the great benefaction of Mr. Carnegie, the world now has in its possession a powerful engine for the accomplishment of precisely this end. The establishment of the Carnegie Endowment for International Peace marks an epoch, in that it furnishes the organization and the means for a sustained and systematic effort to reach and to convince the public opinion of the world by scientific argument and exposition. Talk about the evils of war there has been in plenty; we are now ready and anxious for something more constructive.

The trustees of the endowment have taken a broad and statesmanlike view of its aims and purposes. While they do not overlook the value of the work of propaganda and intend to aid in carrying it on, they believe that the time has come when the resources of modern scientific method and of modern scholarship should be brought to bear upon the problem of international relations. They believe that the leading jurists and economists of the world should be set at work in the service of humanity to ascertain just what have been and are the legal and economic incidents of war, and just what are the legal and economic advantages to follow upon the organization of the world into a single group of friendly and co-operating nations bound together by the tie of a judicial system resting upon the moral consciousness of mankind, from whose findings there can be no successful appeal. The plans of the trustees have been formulated with these ends in view.

It has been determined by the trustees of the Carnegie Endowment to organize the undertaking committed to their charge as a great institution for research and public education and to carry on its work in three parts or divisions—a Division of International Law, a Division of Economics and History, and a Division of Intercourse and Education. Otherwise stated, these three divisions will represent the juristic, the economic, and, broadly speaking, the educational aspects of the problem before the trustees, which is to hasten the abolition of international war by the erection of an international judicial system competent to hear and to determine all questions of difference arising between nations.

The Division of International Law will be under the direction of Professor James Brown Scott, whose services at the Department of State, at the second Hague Conference, and in connection with the American Society and Journal of International Law, are too well known to need specific enumeration. This division will promote the development of international law, and by study, by conferences, by aiding negotiations, and by publication, and will assist in bringing about such a progressive development of the rules of international law as will enable them to meet with constantly growing adequacy the needs of the nations of the world in their juristic relations toward each other. It will not be sufficient, however, to bring the principles and rules of international law to the notice of the people of various nations; the rights and duties that are implied in these principles and rules, and that follow from them, must also be

clearly and effectively taught. Furthermore, this division of the endowment will aim constantly to inculcate the belief that intercourse between nations should be based upon a correct and definite idea of international justice. To the perfecting and clarifying of the fundamental conception of international justice this division will assiduously devote itself.

All this study and activity have for their object to hasten the day when the principles and rules of international law will be so clearly apprehended and so satisfactory that the settlement of international differences and disputes in accordance with their terms will become the unvarying practice of civilized nations.

For this purpose the endowment will associate with Dr. Scott a consultative board composed of some of the most distinguished international lawyers in the world. The point of view of each great nation will be represented in their councils, and the results to be arrived at will be the joint work of jurists of every school and of every language. It is not too much to hope that by the influence of these scholars the international law of the future will prove to be without the division between the law of peace and the law of war which is now characteristic of it. The method which obtains in the domain of municipal law affords a model and an example for the method to be applied in the field of international law. We need, first, an agreement as to the fundamental principles which should regulate the rights and duties of nations in their mutual intercourse, which principles would then form the substantive law of nations. The means and instrumentalities provided to enforce a right or to redress a wrong would indicate the natural and normal procedure to be followed in international discussion and litigation. It would then appear that for the maintenance of rights and for the redress of wrongs between nations there are, first, the legal remedies, and, secondly, the resort to violence and force. In this way the rules of war would cease to form a part of the substantive law of nations; they would be classed, together with the peaceable remedies and after them, as one of the possible means of enforcing rights and redressing wrongs. The text-books of international law would no longer put war on an equality with peace, but would relegate it to its appropriately subordinate place in the consideration of questions of procedure.

The Hague Conference has solemnly declared that the maintenance of peace is the supreme duty of nations. For the execution of this supreme duty adequate means must be provided. If they are at hand they should be strengthened; if they are not at hand, they must be brought into existence. A study of the struggle in the history of Europe between self-redress and the judicial settlement of private disputes, and of the steps by which private warfare was abolished and civil actions were made determinable by courts of law, will help to convince the nations of the world that the very measures which they have taken within their several borders to do away with self-redress and to establish domestic peace and order, are precisely those which will establish order and justice and assure peace between the nations themselves. This whole process is one of legal evolution.

The second division of the work of the Carnegie Endowment will be the Division of Economics and History. It will be under the direction of Professor John Bates Clark, of Columbia University, whose foremost place among English-speaking economists is gladly recognized everywhere. The work of this division, like that of the Division of International Law, will be scientific and scholarly in character, in organization and in method. Like the Division of International Law, the Division of Economics and History will aim at the education of public opinion and at the formulation of conclusions that may serve for the guidance of governmental policy. With Professor Clark will be associated a score of the world's leading economists. England, Germany, France, Italy, Austria-Hungary, Switzerland, Holland, Denmark, Japan, the Argentine Republic, and other nations will have a voice and a part in formulating the problems to whose solution this division will address itself, and in working out the solutions of those problems. The results arrived at in this case, as in the case of the Division of International Law, will not be those imposed upon the judgment of one people by the scholars and economists of another, but they will be those that are reached by co-operation between economists of a dozen nations.

It will be the business of this division of the work of the endowment to study the economic causes and effects of war; the effect upon the public opinion of nations and upon international good will, of retaliatory, discriminatory, and preferential tariffs; the economic aspects of the present huge expenditures for military purposes; and the relation between military expenditures and international well-being and the world-wide program for social improvement and reform which is held in waiting through lack of means for its execution.

The highest expectations may confidently be entertained as to the practical results to follow from the successful prosecution of economic studies such as these. Mankind has never yet learned to appreciate the dislocation which war necessarily produces in the economic processes of production, distribution, exchange, and consumption all over the world. A war between two nations is not confined in its effects to the combatants. The interests of neutral powers are involved in some degree. Articles for which there is no market in time of peace are called for in large amounts in time of war; the processes of production are diverted from their normal channels or are artificially stimulated in abnormal ways; exchange is alternately diminished and accelerated; the markets of the world are disarranged, and in every direction are to be found evidences of war's ravages and evil consequences. Mankind must be taught to look upon war as a pathological phenomenon; to seek in the economic and social life of men and nations for its most active causes, and to look farther and deeper in that same economic and social life for modes of preventing war and for allowing the economic activities of mankind to go forward unhindered and unhampered in their mighty task of laying the basis for an increasingly higher and nobler civilization.

The work of this division of the endowment may well result, within a measurable period, in broadening the study and the teaching of political economy everywhere. Moreover, it will help to bring about a new conception of history and to establish new tests of effectiveness in the teaching of it. We shall gain from these studies a new standard in the measurement of human values, and the children of the generations that are to come will have an opportunity to learn more fully than has

yet been possible of the high significance of the scientific and philosophic development of mankind, of his artistic and literary achievements, of his moral and social advances, of his industrial and commercial undertakings; in fact, of all those things which we justly think of as entering into a true conception of civilization.

In these two divisions—those of International Law and of Economics and History—the endowment will, under the leadership and guidance of trained scholars of the first rank, seek to make constant and influential contributions to human knowledge with a view to so instructing public opinion as to hasten the day when judicial process will everywhere be substituted for force in the settlement of international differences and misunderstandings.

There remains a third and important division of the work of the endowment—the Division of Intercourse and Education—the director for which has not yet been announced. It will be the function of this division to supplement the work of the two divisions, which may be called, perhaps, the scientific ones, by carrying forward vigorously and in co-operation with existing agencies the educational work of propaganda, of international hospitality, and of promoting international friendship. Among the tasks of this division will be to diffuse information and to educate public opinion regarding the causes, nature and effects of war and the means for its prevention and avoidance; to establish a better understanding of international rights and duties and a more perfect sense of international justice among the inhabitants of civilized nations; to cultivate friendly feelings between the inhabitants of different countries, and to increase the knowledge and understanding of each other of the several nations; to promote a general acceptance of peaceable methods in the settlement of international disputes, and to maintain, promote and assist such establishments, organizations, associations and agencies as shall be deemed necessary or useful in the accomplishment of the purposes for which the endowment exists. In other words, this division will make practical application of the teachings and findings of the Divisions of International Law and of Economics and History.

It can hardly be doubted that the men at the head of these three important divisions of the work of the endowment, with their immediate associates and colleagues in this and other countries, will speedily come to form a veritable faculty of peace, and that the world will look to them more and more for instruction and for inspiration alike. No such broad and philosophic conception of international relations has ever before been put forward as that which the trustees of the endowment have formulated and made their own. The conception itself and the admirable plans made for its development and application open a new era in the history of the world.

To such great and nobly conceived tasks as these the trustees of the Carnegie Endowment for International Peace have set their hands. Every true lover of his kind will wish them success in their stupendous undertaking, and will offer them earnest and hearty support toward its accomplishment.

AN INTERNATIONAL JUDICIAL SYSTEM.

The organization of an international judicial system goes steadily on. The auspicious settlement of the differences between Great Britain and the United States in regard to the Newfoundland fisheries by their submission to the International Court of Arbitration at the Hague was at once a long step forward in international practice and an example which has not been without its effect upon the public opinion of other nations. It must not be forgotten that an International Court of Prize was created by the Second Hague Conference, and that the same body, composed of accredited representatives from forty-four different nations, recommended the establishment of an International Court of Arbitral Justice. So soon as these two courts shall be put into operation at The Hague a permanent international judiciary will have been created—one capable of hearing and deciding any and every controversy of a justiciable character which may arise between nations either in time of peace or because of the existence of a state of war.

The convention for the establishment of the International Court of Prize has been approved by thirty-four nations. Despite this fact, the court has not yet been instituted. Various objections have been made to its institution as planned, and to overcome these objections no little time, patience, and diplomatic skill have been necessary. It is common knowledge that Great Britain objected to that article of the convention establishing the International Court of Prize which gave to the court the power to determine, as well as to administer, the law where the principle of law applicable to the facts as found had not yet been formulated by international practice or imposed upon the court by convention. Great Britain did not wish to invest the International Court of Prize with law-making functions, and therefore postponed its acceptance of the convention until an agreement had been had upon the principles of law which the tribunal was to administer. Upon the invitation of the Government of Great Britain, representatives of the leading naval powers assembled in London from December 4, 1908, to February 26, 1909, and agreed upon the so-called Declaration of London, the purpose of which is to furnish the proposed tribunal with the law which as the International Court of Prize it is to administer. In this way the objection of Great Britain has been met.

On the other hand, the United States objected to those provisions of this same convention which gave to the proposed tribunal the attributes of a court of appeal, and under which a judgment of the Supreme Court of the United States might be subject to review at its hands. This objection, which must be considered in large part sentimental, drew its force from the fact that under the Constitution there is but one Supreme Court, and that an appeal from its findings to an International Court at The Hague would seem to take away some of the powers which the Supreme Court possesses and of which Americans are so justly proud. This objection is, as has been said, in large measure sentimental, because the International Court of Prize is to be, not a national but an international institution, and the Constitution applies, of course, to a court within the United States and not to one without the country. Nevertheless, an alternative form of procedure has been proposed which meets the objections offered on behalf of the United States and which, embodied in the form of an additional protocol, has been approved by the signatories of the original convention. By the terms

of this additional protocol any nation which feels itself precluded from following, for constitutional reasons, the procedure originally proposed for the International Court of Prize, is placed in a position where recourse to that court can only be exercised against it in the form of an action in damages for the injury caused by an alleged illegal capture.

On February 15, 1911, the Senate of the United States approved both the original convention as to the International Court of Prize and the additional protocol. Ratifications of both instruments by the various signatories will doubtless be deposited at The Hague during the present year, and the International Court of Prize will then become an accomplished fact.

Great as are the advantages of an International Court of Prize, the fact must not be overlooked that the very existence of such an institution presupposes war; for its purpose is to decide controversies arising because of alleged illegal captures in time of war. The International Court of Arbitral Justice, on the other hand, has for its purpose the settlement of controversies and differences which arise in time of peace and which, when settled and determined, may avert hostility and war. It will be remembered that at the second Hague Conference the proposal of the United States in regard to the establishment of this court was accepted in principle and that a draft convention was adopted regulating its organization, jurisdiction and procedure; but that the definitive constitution of the court was not agreed upon because the conference failed to hit upon a method of selecting the judges that was acceptable to all of the nations represented.

The Government of the United States has been at work, through appropriate diplomatic channels, upon the problem of bringing about the establishment of this court, and it is with no small satisfaction that I am enabled to say that the progress which is making in the consideration of this matter indicates that it will be brought to a favorable conclusion in the near future. At this conference one year ago the Secretary of State authorized the announcement that he had reason to believe that the International Court of Arbitral Justice would be instituted before the time set for the meeting of the third Hague Conference. It is now possible to say, again with the knowledge and approval of the Secretary of State, that the progress made during the past year has been so marked that in all likelihood such a court, created by general agreement, will be erected at The Hague even earlier than seemed probable a year ago.

Both war and peace, therefore, are soon to have their courts—the International Court of Prize and the International Court of Arbitral Justice. There can be no reasonable doubt that one of the results of the latter will very soon be to make the former a monument to an order of things that is past.

EXCESSIVE ARMAMENTS.

The nations are still struggling with the problem of inflated armaments, and no sensible progress has been made towards gaining relief from their burdens. Those who believe, with this Conference, in the efficacy of international courts for the settlement of international differences, are inclined to feel that these great armaments may well be left to tumble over, one of these days, of their own unnecessary weight. When, as we have recently seen, the successful and popular battleship of a few years ago is only useful as a target for the marksmen of today, the future of excessive armaments may be viewed with comparative serenity.

The widespread persistence of the mistaken notion that in some way big navies protect and develop commerce is responsible for much of the present national loss and waste. The last blow would be dealt to this notion if the other great powers would consent to join the United States in writing into international law the principle that private property at sea shall be free of capture and seizure in time of war. Preying upon private property and its confiscation have long been forbidden in wars conducted on land; why should they be permitted longer to exist when war is carried on at sea? Who is to gain by the continuance of this now barbarous practice?

It is a sign of great promise that at the last regular meeting of the Council of the London Chamber of Commerce no less a person than Lord Avebury moved "that, in the opinion of this Chamber, private property at sea should be declared free of capture and seizure." The motion was carefully discussed and then adopted by a unanimous vote. The conflict here is between admiralties and the commercial and financial forces of the nations. The admiralties of the world must be compelled to give way on this point—where they have not already done so—to the reasonable demands of those whose property is subjected to loss and damage by persistence in the present unhappy and uncivilized policy, to say nothing of the demands made by those who take still higher moral and public grounds. As Mr. Hirst, editor of the London *Economist,* so forcibly wrote a short time since—"This policy of commerce destruction is really moribund and obsolete. If practiced between two great commercial nations it would raise such an outcry and involve such injustices that I feel sure it would be dropped by mutual consent at an early stage of hostilities. Nevertheless, the maintenance of the right is highly mischievous because it is a prime incentive to armaments in time of peace and a prime cause of oppressive taxation. Statesmen and journalists found most of their arguments for increased expenditure on armaments upon the necessity for protecting commerce. To a greater or less extent they know that their plea is fraudulent, but it serves the purpose."

THE ARBITRATION TREATY WITH ENGLAND.

When the Senate of the United States refused, fourteen years ago, to ratify the proposed arbitration treaty with England negotiated by Secretary Olney and Sir Julian Pauncefote and transmitted with the earnest approval of President Cleveland, there was deep disappointment. At that time forty-three Senators voted for ratification and twenty-six against. The treaty, therefore, failed to receive the two-thirds majority required by the Constitution. A change of three votes from the negative to the affirmative side of the question would have ratified a treaty, the first article of which provided for the submission to arbitration of all questions in difference between the high contracting parties which they might fail to adjust by diplomatic negotiation. The disappointment at the rejection of the Olney-Pauncefote treaty was as pronounced in Great Britain

as it was in the United States. The London *Spectator* thought that the rejection of the treaty was due to the element of our population that likes a fight and a flourish, that hates moderation and sobriety and prudence, and that cannot tolerate the notion of the fate of the country being in the hands of clergymen and professors, of lawyers and philanthropists. However that may be, the treaty was rejected, and not until the present time has any successful attempt been made to renew the undertaking then interrupted. President Taft's direct, unequivocal, and emphatic declaration as to the scope of international arbitration, and in particular as to the wisdom of an international arbitration treaty with Great Britain, has aroused the greatest enthusiasm on both sides of the Atlantic. The reception of his words in Great Britain has been, so far as one can judge, quite unexampled. Every element of the population and the leaders of all shades of political opinion have joined together in an enthusiastic reception of the President's splendid declaration. It is understood that an arbitration treaty with Great Britain, making no reservations as to the subjects of difference which are to be submitted for judicial determination in accordance with its terms, is soon to be submitted to the Senate for ratification. It is also understood that the preliminary negotiations have been conducted with such discretion and tact and with such full knowledge on the part of the Senate that prompt and substantially unanimous ratification of such a treaty is assured.

Surely, then, some American poet should feel the inspiration to provide our Republic with a Peace Hymn that would stir and move and inspire as did Julia Ward Howe's fine Battle Hymn of the Republic at the outbreak of the terrible struggle between the States. Nations, like individuals, are powerfully moved by example and by precedent. A treaty of the kind proposed between two powers of the first class will not long stand alone. Its beneficent influence will call other similar treaties into being, and the peaceful organization of the world through judicial process will have taken another long stride forward. Every such stride forward is a new triumph for reasonableness.

Underlying Principles Which Should Govern the Method of Appointing Judges of the International Court of Arbitral Justice.

By Thomas Raeburn White, of the Philadelphia Bar.

ADDRESS GIVEN AT THE LAKE MOHONK ARBITRATION CONFERENCE, MAY 25, 1911.

The recommendation of the project to establish an International Court of Arbitral Justice was the most significant and in many respects the most important act of the second Hague Conference. The project was fully accepted in principle and failed of adoption only because of inability to agree upon a method of appointing judges. This inability to agree was due to the fact that all nations claimed the right to be equally represented in the court.

Three principal plans were discussed at The Hague. They were:

1. That each nation should appoint one judge, making a court of forty-six or more. This would be an unwieldly body to exercise judicial functions and would inevitably be more of a representative assembly than a court. The plan was, therefore, properly rejected.

2. That a system of rotation should be adopted by which each nation would appoint one judge, but some would sit for longer periods than others, so that no more than seventeen judges would sit at one time. This was rejected because all States would not in fact be equally represented. It is objectionable for the further reason that, while probably a majority of the court would be unchanged from year to year, it would not have that permanence of character most desirable in a judicial body.

3. That a court of fifteen judges should be elected by the ministers of foreign affairs of all contracting powers from among nominees made by said powers, each nation naming one. This pleased neither the large nor the small powers. Each feared the predominating influence of the other.

The project, therefore, failed of adoption because an acceptable method of appointing judges could not be, or at least was not, devised. How shall this difficulty be met? It is agreed that the court must be a strictly *judicial* body, and that to be such the number of judges should not exceed fifteen or at most seventeen. The propositions thus far advanced have involved the appointment or election of judges by the contracting powers, as their representatives in the court, and it has been supposed to follow that the principle of the juridical equality of States must necessarily be abandoned because of the impossibility of dividing fifteen by forty-six. This view is not without its powerful exponents. It is said that, while all nations have equal rights before the law, so far as concerns the maintenance of their sovereignty over their own territory or subjects, or in other such matters, they are not in fact equal either in power or influence, and this should be recognized in determining representation upon an international court.

But there are weighty reasons against this position.

1. It is extremely objectionable to the smaller or weaker States, and they will probably not agree to it.

2. It may not be just or equitable if we admit that *any* nation is to be *represented* in the court. If a small nation is oppressed by a stronger power by the exercise or threat of violence, there is a reaction of world sentiment in favor of the weaker power which results to its advantage, but if such oppression arises from a judicial decision due to the greater representation in the court of a more powerful nation no such reaction would follow. It is not clear that a body which is to decide the rights of the weak as well as the strong ought not to be equally representative of both, if it is representative of either.

3. Power and influence are measured in large part by military and naval strength, and if representation on the court is to be determined by power and influence there will be a tendency to increase armies and navies so as to gain greater representation, thus tending to defeat the very purpose of the establishment of the court.